

ORDINANCE NO. 10-26

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA CONSENTING TO A SUBLEASE OR SITE LICENSE AGREEMENT BETWEEN T-MOBILE SOUTH LLC AND CLEAR WIRELESS LLC TO ALLOW CLEAR WIRELESS LLC TO CO-LOCATE ITS WIRELESS COMMUNICATIONS FACILITY WITH T-MOBILE SOUTH LLC ON THE MONOPOLE COMMUNICATIONS TOWER LOCATED AT GOODLET PARK, 4200 WEST 8 AVENUE, HIALEAH, FLORIDA, AND FURTHER AUTHORIZING THE MAYOR AND THE CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY, TO ENTER INTO A CO-LOCATION WIRELESS COMMUNICATIONS FACILITY LEASE AGREEMENT WITH CLEAR WIRELESS LLC, A NEVADA LIMITED LIABILITY COMPANY, A COPY OF WHICH IS ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "1"; FOR AN ANNUAL RENTAL FEE OF \$7,650.00, WHICH REPRESENTS 50% OF THE AMOUNT OF THE RENT DUE T-MOBILE SOUTH LLC, UNDER ITS LEASE WITH CLEAR WIRELESS; DURING ITS INITIAL TERM AND 50% OF THE AMOUNT OF THE RENT DUE T-MOBILE SOUTH LLC THEREAFTER PLUS A \$6,000 CONSENT FEE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Hialeah, Fla., Ordinance 05-12 (Jan. 30, 2005), the City and Omnipoint Holdings, Inc., a Delaware corporation, a predecessor in interest to T-Mobile South LLC, entered into that certain lease agreement dated January 30, 2005) that has extended the lease through March 30, 2015 by virtue of exercising its first five-year renewal option pursuant to Hialeah, Fla., Ordinance 10-13 (Feb. 25, 2010) and as same be further amended from time to time, (collectively the "Ground Lease" or "Prime Lease"); whereby leased a portion of the property located at Goodlet Park for the purpose of constructing, operating and maintaining a communications facility and uses incidental thereto, including a 100-foot monopole and all necessary connecting appurtenances; and

WHEREAS, Clear Wireless desires to sublease from T-Mobile South LLC both ground space and tower space to install, maintain and operate Clear Wireless' communications facility on the Goodlet Park communications tower; and

WHEREAS, City desires to consent to Site License Agreement ("SLA") between T-Mobile South LLC and Clear Wireless; and

WHEREAS, Clear Wireless desires to enter into a lease agreement with the City to permit the co-location with T-Mobile South LLC on the Goodlet Park communications tower and the City likewise agrees to enter into a lease in the best interest of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The foregoing facts and recitations contained in the preamble to this ordinance are hereby adopted and incorporated by reference as if fully set forth herein.

Section 2: The City of Hialeah, Florida hereby consents to a sublease or Site License Agreement between T-Mobile South LLC and Clear Wireless LLC to allow Clear Wireless LLC to co-locate its wireless communications facility with T-Mobile South LLC on the monopole communications tower located at Goodlet Park, 4200 West 8 Avenue, Hialeah, Florida, and further authorizes the Mayor and the City Clerk, as attesting witness, on behalf of the City, to enter into a Co-Location Wireless Communications Facility Lease Agreement with Clear Wireless LLC, a Nevada limited liability company, a copy of which is attached hereto and made a part hereof as Exhibit "1", for an annual rental fee of \$7,650.00, which represents 50% of the amount of the rental fee due T-Mobile South LLC under its lease with Clear Wireless, during its initial term and 50% of the amount of the rent due T-Mobile South LLC thereafter plus a \$6,000 consent fee. The location and landscaping of the wireless communications facility is subject to site plan review.

Section 3: **Repeal of Ordinances in Conflict.**

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4: **Penalties.**

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed with a civil penalty not to exceed

\$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty described above, the City may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 5: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 6: Effective Date.

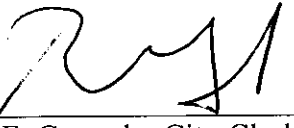
This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED and ADOPTED this 27th day of April, 2010.

THE FOREGOING ORDINANCE
OF THE CITY OF HIALEAH WAS
PUBLISHED IN ACCORDANCE
WITH THE PROVISIONS OF
FLORIDA STATUTE 166.041
PRIOR TO FINAL READING.


Carlos Hernandez
Council President

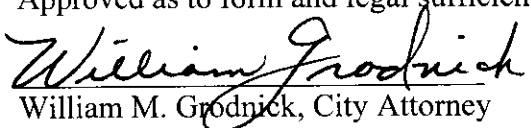
Attest:


Rafael E. Granado, City Clerk

Approved on this 30 day of April, 2010.


Mayor Julio Robaina

Approved as to form and legal sufficiency:


William M. Grodnick, City Attorney

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Ordinance was adopted by a 6-0 vote with Councilmembers, Caragol, Casals-Muñoz, Garcia-Martinez, Gonzalez, Hernandez, and Yedra voting "Yes", Councilmember Cue absent.

CO-LOCATION WIRELESS COMMUNICATIONS
FACILITY LEASE AGREEMENT

This Consent Agreement ("Agreement") is made and entered into this ____ day of _____, 2010 by and between the City of Hialeah, a municipal corporation of the State of Florida ("Owner" or "City"), and Clear Wireless, LLC, a Nevada limited liability company, its successors or assigns ("Clear Wireless").

RECITALS

WHEREAS, City is the owner of certain real property located within Goodlet Park, together with ingress and egress, located at 4200 West 8 Avenue, Hialeah, Florida and legally described on Exhibit "A" attached hereto (the "Property").

WHEREAS, pursuant to Hialeah, Fla., Ordinance 05-12 (Jan. 30, 2005), the City and Omnipoint Holdings, Inc., a Delaware corporation, a predecessor in interest to T-Mobile South LLC, entered into that certain lease agreement dated January 30, 2005) that has extended the lease through March 30, 2015 by virtue of exercising its first five-year renewal option pursuant to Hialeah, Fla., Ordinance 10-13 (Feb. 25, 2010) and as same be further amended from time to time, (collectively the "Ground Lease" or "Prime Lease"); whereby leased a portion of the property located at Goodlet Park for the purpose of constructing, operating and maintaining a communications facility and uses incidental thereto, including a 100-foot monopole and all necessary connecting appurtenances. A copy of the Prime Lease is attached hereto as Exhibit "B" and is incorporated herein and made a part hereof by this reference; and

WHEREAS, Clear Wireless desires to sublease from T-Mobile South LLC both ground space and tower space to install, maintain and operate Clear Wireless' communications facility.

WHEREAS, Section 8 of the Prime Lease, requires any tenant co-locating on T-Mobile South LLC's communications tower to enter into a Lease Agreement with the City and further requires that any co-location rental payments shall be equally divided between T-Mobile South LLC and the City.

WHEREAS, Clear Wireless desires to enter into a Lease Agreement with the City to permit the co-location of the Clear Wireless' communications facility within the Property.

WHEREAS, City desires to consent to Site License Agreement ("SLA") between T-Mobile South LLC and Clear Wireless subject to the terms and conditions hereinafter set forth, subject to approval by the City Council of the City of Hialeah, Florida;

NOW, THEREFORE, for and in consideration of the amounts enumerated below, the mutual covenants and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Clear Wireless hereby agree as follows:

1. The foregoing recitals are true and correct and are incorporated herein by reference.

2. City consents to (a) T-Mobile South LLC and Clear Wireless entering into the Site License Agreement as same may be amended from time to time, (collectively the "Sublease"), whereby Clear Wireless shall sublease from T-Mobile South LLC both ground space and tower space for the installation, maintenance and operation of T-Mobile South LLC's communications facility ("Permitted Purpose") and (b) hereby agrees to enter into a Lease Agreement with Clear Wireless. In consideration of City's consent and this Lease of the property, within thirty (30) days after the date this Agreement is executed by both parties, Clear Wireless agrees to make a one-time payment to City in an amount equal to Six Thousand and 00/100 Dollars (\$6,000.00) (the "Consent Fee") and to pay rent to the City in an amount equal to Seven Thousand Six Hundred Fifty and 00/100 Dollars (\$7,650.00) for each year during the initial term (the "Consent Fee"), which represents an amount equal to fifty per cent (50%) of the total amount due to T-Mobile South LLC, payable in equal monthly installments on the first day of the month in advance ("Rental Fee"). In no event shall such rental fee be less than 50% of the amount of Section 8 of the Site License Agreement for the initial term or less than 50% of the amount established for subsequent or renewal terms of the Site License Agreement and incorporated herein. The rental fee herein shall be adjusted as the rental fee is adjusted in the Site License Agreement or in any amendments or renewals thereto. Any amounts due to the City shall take priority and be paid first before any amounts due to T-Mobile South LLC or any other entity.

3. Term. The parties agree that this Agreement shall commence upon execution by the Mayor of the City of Hialeah, after City Council approval, and shall terminate as of the expiration date or earlier termination date of the Ground Lease, Site License Agreement or Termination clause of this Agreement, whichever occurs first.

4. The City covenants that it is seized of good and sufficient title and interest to the Property and has full authority to enter into and execute this Agreement. This Agreement shall extend to and bind the heirs, personal representative, successors and assigns of the parties hereto.

5. Use. City hereby grants to Clear Wireless the privilege to use that portion of the Property shown on Exhibit "C" attached hereto ("Authorized Area") for the purpose of installing, constructing, operating and maintaining thereon the "Communications Facility" (as defined herein below) subject, however, to the terms and provisions of this Agreement. Clear Wireless' use shall be non-exclusive and subject to the Ground Lease and the SLA agreement between T-Mobile South LLC and Clear Wireless. "Communications Facility" is defined to include Clear Wireless' antenna(s) to be installed on T-Mobile South LLC's Tower and all of Clear Wireless' ground equipment to be installed on T-Mobile South LLC's leased premises, provided however that Clear Wireless obtains approval for the communications facility from the City pursuant to the City Code. It is understood that Clear Wireless shall not use the Property for any purpose other than the Permitted Purpose, and that the City retains the right to enter into additional non-exclusive Agreements with other communications providers to the Property, and further, reserves the right to use the Tower and Property for its own communications purposes, provided however, any further

uses of the Tower and the Property by persons or entities other than the City shall not interfere with Clear Wireless' use of same. City hereby further authorizes Clear Wireless, its successors and assigns for the Term, non-exclusive use of the Property in the location shown on Exhibit "C", or such other location as agreed to in writing between the parties, for pedestrian and vehicular ingress and egress to the Property and for the installation, operation and maintenance of utilities servicing the facilities installed upon the Authorized Area, provided that Clear Wireless' access to the Property shall not disturb the City's use of the Property. Clear Wireless shall have a right of access, twenty-four (24) hours a day, seven (7) days a week, to its equipment and antennas, and shall have the right to run cables and wires under, over, and across the Property, as directed by the City, to connect Clear Wireless equipment on the Tower to its equipment on the ground, and to its system. Clear Wireless shall provide the City notice when it wishes to access its Communications Facility to change electric service, change the panel, or change the power distribution within or to the panel, and shall coordinate such access and work as reasonably directed by the City. Clear Wireless recognizes that its rights to use the Property are non-exclusive and that the City's public safety communications system and other communications systems may be located on the Tower.

6. Clear Wireless shall also pay when due all electric, water, sewer, gas, fuel and other utilities fees which are needed to serve the Communications Facility and in addition, shall pay if applicable, when due all other taxes, and other governmental exactions on the communications service or Communications Facility as are lawfully imposed.

7. Improvements; Utilities; Access.

a. Clear Wireless shall have the right to install, maintain and operate within the Property such utilities (including, without limitation, electricity and telephone) necessary to serve the Communications Facility. The City shall have the exclusive discretion to approve or not approve the proposed location of all cables, wires, conduits, communications machinery, and other communications equipment and communications appurtenances which are installed in, over, under, or upon the Property. The parties recognize that Clear Wireless may be required by the City to install underground its lines and conduits around structures or under vacant or paved areas, but not under buildings, and such routing shall not be considered as frustrating the intent and purpose of this Agreement. Clear Wireless' equipment shall be installed in strict compliance with all applicable laws, ordinances and regulations.

b. Clear Wireless, at its expense, shall keep and maintain the Property and Clear Wireless' Communications Facility in good condition and repair during the Term of this Agreement. The City shall have the right to grant other entities non-exclusive use of the Tower and Property for wireless communications providers or for governmental purposes. Clear Wireless acknowledges its willingness to permit co-use of the Tower and Property for these purposes.

8. Termination.

This Agreement may be terminated, without any penalty or further liability, effective after the various notice periods described hereafter expire, as follows:

a. by City, if Clear Wireless fails to cure a default for payment of amounts due under this Agreement within thirty (30) days after Clear Wireless' receipt of written notice of default from City;

b. by City, if Clear Wireless fails to comply with the interference or co-use requirements as required by the City, and same is not cured within fifteen (15) days of written notice from City to Clear Wireless;

c. by City, on sixty (60) days written notice if Clear Wireless has abandoned the Communications Facility or Tower, provided that Clear Wireless shall have the opportunity to cure any claimed abandonment within such sixty (60) day period and thereby avoid termination. Abandonment shall be presumed if the Communications Facility is damaged and is not repaired for a ninety (90) day period, or if such facilities are not periodically maintained consistent with the customary and usual maintenance practices for such equipment in the industry;

d. by Clear Wireless, on sixty (60) days prior written notice, if it is unable to obtain, maintain or otherwise forfeits any license, permit or other governmental approvals necessary for the construction or operation of the Communications Facility or Clear Wireless' actual or intended use of the Authorized Area; or

e. by Clear Wireless, on sixty (60) days prior written notice, if Clear Wireless determines, in its reasonable discretion exercised in good faith, that based on (i) technology, (ii) interference with use of the Authorized Area resulting from the acts of any third party, an act of God or from other natural forces, (iii) changes in system design or system usage patterns; or, (iv) discovery of any matter of title or use restriction which creates a significant and immediate risk of preventing the continued use of the Authorized Area for the Permitted Purpose, Clear Wireless' use of the Communications Facility is no longer consistent with the reasonable operation of Clear Wireless' communications system; or,

f. By either party, if the other party defaults and fails to cure such default within thirty (30) days after written notice of such default is received by the defaulting party from the non-defaulting party; provided, however, that if such default is capable of being cured, but not within such 30 day period, this Agreement may not be terminated so long as the defaulting party commences appropriate curative action within such thirty (30) day period and thereafter diligently prosecutes such cure to completion as promptly as possible.

g. Upon termination of the agreement between Clear Wireless and T-Mobile South LLC. In the event Clear Wireless terminates this Agreement pursuant to this paragraph, Clear Wireless shall be excused from paying any further Consent Fee or Rental Fees after the later of the termination's effective date or the removal of all Clear Wireless facilities from the property.

9. Indemnity and Hold Harmless. Except for any claims, costs, losses or damages or causes of action arising from or due to the gross negligence or willful misconduct of City, Clear

Wireless shall indemnify and hold harmless the City, and its elected officials, appointed officials, agents, subcontractors, assignees, and employees, from and against any and all claims, costs, losses, and damages, including but not limited to all fees and charges of engineers, attorneys, and other professionals, and all court or other dispute resolution costs, liabilities, expenditures, or causes of action of any kind arising from, or relative to, this Agreement, the acts or omissions of Clear Wireless or its employees, or any of Clear Wireless' contractors or agents, including negligent, reckless, willful, or intentional acts or omissions.

10. Assignment. Clear Wireless may not assign this Agreement or transfer any of its rights under this Agreement without the City's prior written consent; provided that Clear Wireless may assign this Agreement to a parent, affiliate, subsidiary or purchaser of all or substantially all of Clear Wireless' assets upon prior written notice to City.

11. Antennas and Equipment. Clear Wireless' antennas and equipment shall remain personal to and the property of Clear Wireless. At the termination or expiration of this Agreement, Clear Wireless shall promptly remove its antennas and equipment, and repair any damage caused by such removal, and shall otherwise surrender the Property at the expiration of the Term, as same may have been extended, or the earlier termination thereof, in good condition, ordinary wear and tear, damage by fire and other casualty excepted.

12. Compliance with City Code. Clear Wireless shall comply with all terms, conditions, and requirements of the Code of the City of Hialeah, Florida as amended from time to time. In the event this Agreement or any terms and/or conditions therein conflict(s) with any provision(s) of the City's Code the City Code provision(s) shall control.

13. No Waiver. Nothing herein shall be construed as a waiver of any of the City's rights under the Prime Lease and any amendments thereto nor shall anything herein be construed as a modification of any of T-Mobile South LLC's obligations under the Prime Lease, the City Code or applicable federal and state law.

14. Approval by City Council. This Agreement shall not take effect until the City Council of the City of Hialeah, Florida approves it at a duly-noticed public hearing.

15. Miscellaneous.

a. This Agreement may be recorded in the Public Records of Miami Dade County; however, the original shall be maintained by the City Clerk as a public record of the City of Hialeah, Florida.

b. This Agreement constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendment to this Agreement must be in writing and executed by the parties, and must bear the signature of the Mayor of the City of Hialeah, Florida.

c. There is ample and sufficient consideration to support each and every obligation of the Parties as set forth in this Agreement.

d. Each party hereto has had an opportunity to consult with and receive advice of legal counsel of their own selection prior to executing this Agreement, and this Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted.

e. This Agreement shall be construed in accordance with the laws of the State of Florida. If any term or provision of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.

f. The parties agree that the terms of this Agreement and the obligations of the parties pursuant thereto shall be specifically enforceable, and may be enforced by injunctive relief.

g. The venue for any litigation arising out of, as a result of, relating to, or pertaining to this Agreement or the performance thereof, shall be in the Circuit Court for the Eleventh Judicial Circuit, in and for Miami Dade County, Florida or in the United States District Court for the Southern District of Florida, whichever Court will entertain jurisdiction.

16. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the party to be notified may have designated to the other by notice delivered in accordance with this paragraph):

Owner: City of Hialeah, Florida
c/o City Attorney
501 Palm Avenue
Hialeah, Florida 33010 -4789

Clear Wireless Clear Wireless LLC
Attn: Site Leasing
4400 Carillon Point
Kirkland, Washington 98033

With copy to: Clear Wireless LLC
Attn: Legal Department
4400 Carillon Point
Kirkland, Washington 98033

Notice shall be effective upon mailing or delivering the same to a commercial courier, as permitted above.

[SIGNATURES ON NEXT PAGE]

IN WITNESS HEREOF, the parties hereto have executed this Agreement as of the date first written above.

City of Hialeah, Florida

Attest:

Rafael E. Granado
City Clerk

By: _____
Mayor Julio Robaina Date

Approved as to form and legal sufficiency:

William M. Grodnick
City Attorney

Witnesses

Clear Wireless LLC

Name: _____

By: _____

Name: _____

Its: _____
Title

T-Mobile South LLC is executing this Agreement in order to acknowledge the consent herein granted by the City of Hialeah, Florida to the Sublease with Clear Wireless for space on T-Mobile South LLC's tower and ground space within the Property for the purpose of establishing Clear Wireless' telecommunications facility at this site as required under the Ground Lease and all terms and conditions contained herein.

WITNESSES

T-Mobile South, LLC

Name: _____

By: _____

Name: _____

Name: _____
Its: Managing Member